SENS. GEORGE MITCHELL (D-ME) AND ALAN SIMPSON (R-WY) NEAR AGREEMENT on the Clean Air Act, according to congressional sources. The two have been exchanging letters for the past several months to discuss Mitchell's Clean Air Act bill, and until recently remained at a stalemate. But Mitchell reportedly has agreed to change portions of his bill on acid rain control to require 10-million rather than 12-million tons of sulfur dioxide emissions reductions, as called for in his original bill. Mitchell has consistently been attempting to gain the endorsement of Simpson, representing the West, for his bill. Simpson has been vying for a 10-million ton bill to reduce the bill's overall cost.

EPA SHOULD WEIGH COST TO OSWER OF LEAD IN DRINKING WATER RULE, SAY STAFFERS

An upcoming proposal to regulate lead in drinking water could cost the Office of Solid Waste & Emergency Response up to $350-million by forcing more meticulous Superfund cleanups, EPA sources say, prompting an attempt by some staffers to persuade the Office of Drinking Water to take the expense into account when developing the rule. At issue is a lowered Safe Drinking Water Act "maximum contaminant level" that would force OSWER to meet tougher standards in Superfund cleanups. In addition, the lowered MCL also may bring under strict Resource Conservation & Recovery Act regulation a significantly larger number of wastestreams, as the MCL is one factor considered in listing and delisting waste. EPA officials maintain that the cost to OSWER is negligible, and doubt that the MCL will be revamped. Nor, they say, will the cost to OSWER be figured into the proposal. Staffers backing a stiff MCL assert that the charge is ill-founded, motivated by an attempt to eviscerate the expansive rule. EPA administrator Lee Thomas has not yet been briefed on the issue, and Office of Drinking Water officials refused comment on how it may be resolved. The debate is the latest in a series of battles that have held up the proposal (Inside EPA, April 1, p1). Region V reportedly will refuse to concur on the rule (see box.)

EPA is considering lowering the MCL for drinking water supply systems from 50 parts per billion to 5 ppb in its proposal, which has been in final agency review. Staffers who have been opposing the strict standard maintain that the plan carries potential costs to the OSWER program almost as great as the likely expense to drinking water suppliers under the rule's lead and corrosion control provisions. Two reports prepared by EPA contractor ICF Inc., studied the potential costs of new or additional treatment of lead-contaminated groundwater at Superfund sites, as well as additional industry wastestreams brought into the system. MCLs are the basis for OSWER's "extraction procedure" (EP) test, the vehicle for determining whether wastes must be managed under RCRA. Thus, OSWER will be forced to revise the test when the new rule is issued, explain OSWER staffers.

The ICF studies reportedly suggest most Superfund sites will not be significantly affected by the lowered MCL, predicting a cost increase of only 1%-3% for lead-contaminated sites, an additional cost of $24-million to $51-million. The studies found the scrap steel and iron industry most vulnerable to increased cost under a lowered MCL, which will force RCRA regulation and treatment for lead-contaminated "shredder fluff" the industries generate. The result is a 3%-5% increase over existing RCRA costs for these industries. The price tag for additional waste management that would be required if petitions to delist waste are denied when industry wastestreams fail to meet the new MCL - and thus continue to be regulated under RCRA subtitle C -- is $17-million, less than a 0.5% increase.

Some staffers within the Office of Drinking Water and OSWER believe these costs are significant and should be included in EPA's regulatory impact analysis. The costs will yield only minimal benefits, says one staffer pushing for a more "realistic" standard. One staffer agrees that the drinking water office need not consider the cost to other programs of its standards, but says the issue "calls into question whether drinking water standards are good for [Superfund] groundwater cleanups." And another staffer argues that the agency's mandate to use MCLs as the "applicable or relevant and appropriate requirement" at Superfund sites forces use of standards designed for public drinking water systems that are ill-suited to Superfund cleanups. Nonetheless, this source doubts EPA will change the policy, but says OSWER over the next two months will be examining more thoroughly the effects on OSWER of various drinking water standard revisions. One OSWER source says the office does not object to the proposed rule, but merely wants to alert management to the potential implications.

Costs to the RCRA and Superfund programs are minimal and inconsequential when compared to the overall benefits of controlling lead, says an angry drinking water office staffer, who points out that lead, "without a doubt, is the single greatest contaminant to which all of the U.S. is exposed." Acknowledging that some Superfund sites and RCRA wastes may be captured by the lowered MCL, the costs are "not a big deal. Compared to the total costs of the program, the incremental costs to RCRA and Superfund are small," the source says. Claims of elevated costs are based on limited data and a "very warped perspective," says this source. Further, the Superfund office allows EPA to waive use of MCLs at some sites if they are

REGION V TO REFUSE TO AGREE ON LEAD IN DRINKING WATER PROPOSAL

EPA Region V plans to formally oppose the agency's proposal to regulate lead in drinking water over a sampling requirement the region regards as unduly burdensome and possibly illegal. The lead in drinking water proposal, undergoing final "red border" review, has been the subject of heated battles that have slowed release of the rule (*see related story.*) In what staffers say is a rare move, Region V plans to formally "non-concur" on the rule because it opposes a requirement for "first draw" water samples.

The provision would require public drinking water systems to collect 10 to 200 samples/year in the first year from private homes and evaluate whether lead is corrosive to residential plumbing, according to an agency source. If the water in private taps exceeds an average of 10 micrograms/liter or a maximum of 20 micrograms/liter, corrosion control would be required. Because the requirement demands testing of water that has not been tapped for eight hours, agency sources say, it would inconvenience homeowners. Further, it would be "legally impossible" to force homeowners to comply. States would also have difficulty enforcing the mandate. Region V sources reportedly are advocating instead that all public water suppliers institute corrosion control, and suppliers that regard the requirement as unnecessary could engage in the monitoring procedure to demonstrate compliance. Region V sources say they will non-concur to make their opposition known to the EPA administrator.

An EPA official says that the requirement poses potential legal and practical problems, but consultations "have not led the Office of Drinking Water to think it's insurmountable." The Office of General Counsel reportedly felt the provision was legal, but OGC sources refused comment. One agency source suspects that Region V is anticipating problems because of a former requirement in the city of Chicago, IL, that demanded use of lead in service connection pipes between water mains and the private home. One agency staffer sees Region V's proposal to require treatment for all systems as an "outrageous" attempt to make the rule unworkable and scuttle its implementation, and believes Region V regards the entire rule as a "burden." EPA's requirement, this source asserts, is far more reasonable, requiring corrosion control only if systems fail to meet the standards.

found inappropriate, specifically if the water will not be used as a primary drinking water source. "People have been trying to scuttle the regulation for a long time," says one source, who sees the OSWER cost issue as the latest attempt.

HERALDED AS BREAKTHROUGH, BUT FATE OF NEW YORK/ OHIO ACID RAIN PLAN UNCLEAR

A major agreement between New York and Ohio recommending federally mandated reductions of acid rain precursor emissions by 10-million tons annually is being lauded as a major victory for acid rain control by its supporters, but congressional staffers at presstime were unclear that it would receive vital legislative backing. The agreement, long in the works, calls for federal Clean Air Act amendments requiring sulfur dioxide reductions by the year 2003, and authorizes an already controversial $900-million annual subsidy from the oil industry to finance capital control costs. The agreement is significant because it has received the backing of Gov. Richard Celeste (D), who governs the nation's greatest sulfur dioxide emitter, as well as support from Gov. Mario Cuomo (D), from a state that is a major recipient of acid rain precursor emissions. Environmentalists say that Ohio typically has refused to acknowledge that acid rain is a problem.

Sources for the governors say the proposal has received the backing of Sens. Daniel Moynihan (D-NY) and Alfonse D'Amato (R-NY), but has not yet gained the wholehearted support of Sen. George Mitchell (D-ME). It remains unclear whether Mitchell will amend his Clean Air Act bill to incorporate the plan. At presstime, Rep. Sherwood Boehlert (R-NY), head of a group of Republicans favoring acid rain controls, was considering introducing the measure in the House. Staffers for the governors also are briefing members of the House "Group of Nine" -- in particular, Ohio democrat Dennis Eckart -- as the group has yet to develop an acid rain proposal. While environmentalists are jubilant at the involvement of Celeste in advocating an extensive acid rain control plan, industry sources say the governor has received only hesitant support for the proposal.

The proposal grew out of a desire by the two governors to tackle and reach agreement on one of the nation's most difficult regional issues. The pact calls for SO2 reductions in three phases: 3.5-million tons by 1993; an additional 4.5-million tons by 1998; and a final 2-million tons by 2003. It would also require a 25% reduction in nitrogen oxide emissions from stationary and mobile sources by 1998. Importers of petroleum would be required to set aside 2% of all imports, for placement in the strategic petroleum reserve, freeing up $650-million to finance, on a 50% matching grant basis, utility compliance capital costs. A five-year, $2.5-billion matching grant clean coal program would be established, focusing on retrofit technologies geared toward acid rain control.

Backers of the plan see Celeste's support as a significant breakthrough for acid rain control: "The

proposal got the governor of the largest emitting state to agree with a state most adversely affected by acid rain." A state source says Celeste took a "gutsy" stand that will send a message to other major emitting states that the best approach is to actively participate in shaping a bill that minimizes economic impacts. Presidential candidate Michael Dukakis has publicly supported the vehicle, saying that it "bridges regional differences, endorses the need for sharing the cost of acid rain reduction and invests in clean coal technology." Staffers say they aim to gain passage of the plan this year, however, and not necessarily await a new Administration.

Mitchell has applauded the involvement of Celeste, but has not yet commented on the substance of the proposal. One staffer says he may be concerned about the proposal's funding mechanism and its effect on oil prices. One congressional source sees the plan as "middle of the road," and expects it will not receive overwhelming support from any particular faction, but could break the existing deadlock. Another cites as commendable a plan that is stringent, but avoids significant economic impacts on Ohio.

Environmentalists say the plan "politically is good," but sources have "substantive" reservations. Mitchell's bill reduces emissions by an additional 2-million tons in a shorter timeframe, while House Energy & Commerce subcommittee on health & the environment chair Henry Waxman's (D-CA) legislation achieves the same reductions five years sooner, says one environmentalist, so that the Ohio/New York plan "takes too long to do too little." One source supporting middle ground legislation calls the proposal "interesting," but says the subsidy may be "difficult to sell" because it would require the oil industry to subsidize the coal industry. Canadian sources, long pressing for the U.S. to reduce its transboundary emissions, were encouraged by the plan, but like environmentalists question the time in which reductions would be achieved. They have been urging a 50% SO2 reduction by 1994.

Industry sources are not enthusiastic. Though regarding the proposal as a superior alternative to the Mitchell and Waxman bills, it still bears major flaws, specifically its requirement for major reductions early. One source cites recent hearings held by Rep. Philip Sharp's (D-IN) subcommittee on energy & power as suggesting that there is not an urgent need for acid rain control legislation (Inside EPA, June 3, p2), and says the agreement "flies in the face" of such findings. One industry source charges that Celeste did not include "anyone" in the discussions, failing even to brief Ohio's congressional delegation. This source says that both Houses of the Ohio legislature recently passed a resolution stating that there is no need for acid rain control legislation: "The state of Ohio may not be behind it." Staffers for the governor counter that they regularly consulted with various industry groups, including American Electric Power Institute.

EPA DRAFT RULE SETS FIRST-TIME MCLs FOR 27 CHEMICALS; MANDATES STATE MONITORING

EPA will propose maximum contaminant levels (MCLs) for 39 chemicals -- 27 of them for the first time -- and will require monitoring for approximately 100 other chemicals in a draft proposed rule that has completed the agency's red border review process and is expected to receive OMB review by August. The draft, *obtained by Inside EPA*, proposes national drinking water standards for 30 synthetic organic chemicals (SOCs) and nine inorganic chemicals (IOCs) (see list below). The draft proposal sets MCLs for 37 of the 39 chemicals and treatment techniques for acrylamide and epichlorohydrin. EPA will also propose nonenforceable maximum contaminant level goals (MCLGs) for the same 39 chemicals, which include arsenic, asbestos and chromium. Within the draft proposal, EPA also plans to set secondary MCLs -- based upon taste or odor detection levels -- for 11 chemicals, nine of which are in the group of 39; the other two are aluminum and p-dichlorobenzene. The nine chemicals for which both primary and secondary MCLs are being proposed are: o-dichlorobenzene, 1,2-dichloropropane, ethylbenzene, monochlorobenzene, pentachlorophenol, silver, styrene, toluene, and xylene.

The Safe Drinking Water Act requires EPA to establish MCLGs and national drinking water standards for 83 contaminants by June 19, 1989 -- these 39 chemicals among them. As required by the Act, EPA set the MCL levels as close to the MCLGs as "feasible," using the best technology, treatment techniques, and other means available. A detailed discussion of EPA's engineering assessment of technologies is included in the proposal along with an extensive discussion of how the agency derived its MCLs and of the analytic techniques proposed for compliance with the monitoring requirements set forth in the proposal.

EPA proposes requiring the states to monitor for regulated as well as unregulated contaminants. Repeat monitoring requirements for both inorganics and organics are proposed, with tables and schedules stating precise requirements. Remarks in the draft on existing monitoring requirements for inorganics note that they "are inadequate to properly assess human exposure to corrosion by-products such as copper and lead" but the draft does not propose monitoring for such by-products, instead dealing only with source-related inorganics. Among the 100 substances covered by the new monitoring requirements are arsenic, barium, cadmium, chromium, mercury, selenium, nitrate, nitrite, and asbestos, this last potentially present at the tap due to asbestos cement pipe in the distribution system.

Following is the list of proposed MCLs for the inorganic and organic chemicals contained in EPA's draft proposed rule.

Proposed MCLs for organic chemicals:

Chemicals	Level
Acrylamide	treatment technique
Alachlor	0.002 mg/l
Aldicarb	0.01 mg/l
Aldicarb sulfoxide	0.01 mg/l
Aldicarb sulfone	0.04 mg/l
Atrazine	0.002 mg/l
Carbofuran	0.04 mg/l
Chlordane	0.002 mg/l
Dibromochloropropane	0.0002 mg/l
o-Dichlorobenzene	0.6 mg/l
cis-1,2-Dichloroethylene	0.07 mg/l
trans-1,2-Dichloroethylene	0.07 mg/l
1,2-Dichloropropane	0.005 mg/l
2,4-D	0.07 mg/l
Epichlorohydrin	treatment technique
Ethylbenzene	0.7 mg/l
Ethylene dibromide	0.00005 mg/l
Heptachlor	0.0004 mg/l
Heptachlor epoxide	0.0002 mg/l
Lindane	0.0002 mg/l
Methoxychlor	0.4 mg/l
Monochlorobenzene	0.1 mg/l
PCBs	0.0005 mg/l
Pentachlorophenol	0.2 mg/l
Styrene	0.005 mg/l
Tetrachloroethylene	0.005 mg/l
Toluene	2 mg/l
Toxaphene	0.005 mg/l
2,4,5-TP	0.05 mg/l
Xylene	10 mg/l

Proposed MCLs for inorganic chemicals:

Chemicals	Level
Arsenic	0.03 mg/l
Asbestos	7 million fibers/liter (longer than 10 um)
Barium	5 mg/l
Cadmium	0.005 mg/l
Chromium	0.1 mg/l
Mercury	0.002 mg/l
Nitrate*	10.0 mg/l (as N)
Nitrite	1.0 mg/l (as N)
Selenium	0.05 mg/l

Proposed SMCLs:

Chemicals	Level
Aluminum	0.05 mg/l
o-Dichlorobenzene	0.01 mg/l
p-Dichlorobenzene	0.005 mg/l
1,2-Dichloropropane	0.005 mg/l
Ethylbenzene	0.03 mg/l
Monochlorobenzene	0.1 mg/l
Pentachlorophenol	0.03 mg/l
Silver	0.09 mg/l
Styrene	0.01 mg/l
Toluene	0.04 mg/l
Xylene	0.02 mg/l

* In addition, MCL for total nitrate and nitrate = 10.0 mg/l.

Defense Dept. still holding out

EPA REACHES DEAL WITH ENERGY DEPT. ON MODEL SUPERFUND COMPLIANCE LANGUAGE

EPA has secured an agreement with the Energy Dept. that outlines model language to be used in all DOE Superfund cleanup agreements -- an accord EPA sources herald as a major victory. EPA has been met with consistent opposition in talks on federal facility compliance with Superfund, and sought the language as a way to cut down repeated site-by-site disputes. EPA's progress remains clouded, however; the agency has been unable to secure a similar agreement with the Defense Dept. after extensive negotiations. The agency has submitted DOE's language to DOD as a prototype, but DOD reportedly is dismantling it.

The model language: allows EPA to assess stipulated penalties if DOE fails to comply with agreement deadlines; requires DOE to assess facilities and perform any EPA-approved cleanups; includes dispute resolution provisions, with disagreements to be decided by the EPA administrator; and discusses language allowing the agreements to be enforced by states and citizens.

EPA sources are confident that the language will ease negotiations with DOE because pacts reached with the Energy Dept. generally hold. EPA sources hope DOD will follow suit, but are doubtful. If the Defense Dept. remains uncooperative, EPA plans to forward Superfund section 106 administrative orders to the Justice Dept. for action on priority sites: "We can't sit and do nothing," says one agency source.

The model agreement is a step forward, says a congressional source, who nonetheless believes it makes only a small dent in the federal agency dispute. This source points out that EPA has yet to sign an interagency agreement with DOE and says states are not included in the language, and thus EPA will need to renegotiate their role at every site. This source faults EPA for not carrying out the aggressive enforcement plan it has promised, and says federal agencies will budget for cleanup if it fears EPA repercussions.